

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 3:12-CR-171
)	
STEVEN MARSHALL FOUT,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This case came before the Court on February 28, 2013, for an arraignment on the Superseding Indictment [Doc. 12] and a motion hearing on the Defendant's Motion to Continue [Doc. 13] the trial date in this case. Assistant United States Attorney Melissa M. Kirby appeared on behalf of the Government. Assistant Federal Defender Bobby E. Hutson, Jr., represented the Defendant, who was also present.

Following the arraignment, the Court took up the issue of the Defendant's trial, which was scheduled for February 27, 2013. In his motion, the Defendant asks the Court to continue the trial for an additional thirty days to give counsel time to complete his investigation into the facts and circumstances of the case and to advise the Defendant regarding the best possible resolution. The motion states that the Defendant understands that the time between the filing of his motion and the new trial date will be fully excludable for speedy trial purposes. At the hearing, the Government stated that it did not object to the motion.¹ The parties agreed upon a new trial date of May 20, 2013.

¹Both parties initially questioned the need for the motion, given the filing of the Superseding Indictment, but agreed to proceed with the motion at the Court's preference. See

The Court finds the Defendant's motion to continue the trial to be well-taken and that the ends of justice served by granting a continuance outweigh the interest of the Defendant and the public in a speedy trial. 18 U.S.C. § 3161(h)(7)(A). Defense counsel has requested additional time to complete his investigation of the case and to confer with the Defendant. Additionally, the Court observes that the Superseding Indictment, which was filed a week before the trial date, adds a new charge. The failure to grant a continuance would deprive the Defendant of the reasonable time necessary to prepare for trial despite counsel's use of due diligence. See 18 U.S.C. § 3161(h)(7)(B)(iv). The Court finds that the parties could not be ready for trial on February 27, 2013, or in less than two and one-half months.

Accordingly, Defendant Fout's Motion to Continue [**Doc. 13**] is **GRANTED**, and the trial of this matter is reset to **May 20, 2013**. The Court also finds that all the time between the filing of the Motion to Continue on **February 25, 2013**, and the new trial date of **May 20, 2013**, is fully excludable time under the Speedy Trial Act for the reasons set forth herein. See 18 U.S.C. § 3161(h)(7). With regard to additional scheduling, the Court set a new pretrial conference on **May 6, 2013, at 1:30 p.m.** This date is also the deadline for concluding plea negotiations. The Court instructs the parties that all motions *in limine* must be filed no later than **May 6, 2013**. Special requests for jury instructions shall be submitted to the District Court no later than **May 10, 2013**, and shall be supported by citations to authority pursuant to Local Rule 7.4.

Accordingly, it is **ORDERED**:

United States v. Rojas-Contreras, 474 U.S. 231, 236 (1985) (holding that the 30-day period permitted by 18 U.S.C. § 3161(c)(2) did not automatically reset with a superseding indictment but observing that the trial court could have granted an ends of justice continuance to permit time for trial preparation).

- (1) The Defendant's Motion to Continue [**Doc. 13**] is **GRANTED**;
- (2) The trial of this matter is reset to commence on **May 20, 2013, at 9:00 a.m.**, before the Honorable Thomas W. Phillips, United States District Judge;
- (3) All time between the filing of the Defendant's motion on **February 25, 2013**, and the new trial date of **May 20, 2013**, is fully excludable time under the Speedy Trial Act for the reasons set forth herein;
- (4) A final pretrial conference before the undersigned is set for **May 6, 2013, at 1:30 p.m.** This day is also the deadline for concluding plea negotiations;
- (5) Motions *in limine* must be filed no later than **May 6, 2013**; and
- (6) Special requests for jury instructions with appropriate citations shall be submitted to the District Court by **May 10, 2013**.

IT IS SO ORDERED.

ENTER:

s/ H. Bruce Guyton
United States Magistrate Judge